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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,727	09/17/2003	Mana Gotou	HAS-0203	2221

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EXAMINER

FORD, VANESSA L

ART UNIT	PAPER NUMBER
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1645

DATE MAILED: 08/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/663,727

Applicant(s)

GOTOU, MANA

Examiner

Vanessa L. Ford

Art Unit

1645

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 June 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-2 is/are pending in the application.
- 4a) Of the above claim(s) 2 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date 12/17/03 4/7/04.

- 4) ☐ Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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### **DETAILED ACTION**

1. Applicant's election without traverse of Group I, claim 1 filed on June 30, 2006 is acknowledged. Claim 2 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 1 is rejected under 35 USC 112 second paragraph for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites "...weak alkaline water...". What is meant by "weak alkaline water"? Clarification and/or correction is required.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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3. Claim 1 is rejected under 35 U.S.C. 102(b) as anticipated by Admidin et al (*RU 2 050137 C1 published December 20, 1995*)(Abstract only).

Claim 1 is drawn to a digestion promoter for a ruminant animal for promoting digestion of feed in s stomach of the ruminant animal, containing as a main component electrolyzed weak alkaline water produced in an electrolytic with an ion-permeable membrane.

Admidin et al teach electroactivated physiological solution (water) used to feed new born calves (ruminant animal) (see the Abstract). Admidin et al teach that the physiological solution prevents development of gastroenteric diseases in the young calves before feeding them on coarse fodder (see the Abstract). Therefore, the electroactivated physiological solution can be considered a "digestion promoter". The claim limitation "for promoting digestion of feed in s stomach of the ruminant animal" is being viewed as a limitation of intended use. The claim limitation "produced in an electrolytic with an ion-permeable membrane" is being viewed as a process limitation in a product claim. It should be noted that the electroactivated physiological solution as taught by the prior art is produced in an anode zone membrane electrolyser.

Since the Office does not have the facilities for examining and comparing applicant's polypeptide with the polypeptide of the prior art, the burden is on the applicant to show a novel or unobvious difference between the claimed product and the product of the prior art (i.e. the digestion promoter of the prior art does not possess the same material structural and functional characteristics of the claimed digestion promoter). See In re Best, 562 F.2d 1252, 195 USPQ 430 (CCPA 1977) and In re Fitzgerald et al., 205 USPQ 594.

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4. Claim 1 is rejected under 35 U.S.C. 102(b) as anticipated by Kaptur (*SU-1759378-A1 published September 7, 1992*)(*Abstract only*).

Claim 1 is drawn to a digestion promoter for a ruminant animal for promoting digestion of feed in s stomach of the ruminant animal, containing as a main component electrolyzed weak alkaline water produced in an electrolytic with an ion-permeable membrane.

Kaptur teaches that activated water is mixed with dry components such as milk (see the Abstract). Kaptur teaches that the water and dry component mixture is electrolysed with an electrolyser (see the Abstract). Kaptur teach that the water is used to increase the feed quality and speed up the processing operation (see the Abstract). Therefore, the activated water can be considered a "digestion promoter". The claim limitation "for promoting digestion of feed in s stomach of the ruminant animal" is being viewed as a limitation of intended use. The claim limitation "produced in an electrolytic with an ion-permeable membrane" is being viewed as a process limitation in a product claim.

Since the Office does not have the facilities for examining and comparing applicant's polypeptide with the polypeptide of the prior art, the burden is on the applicant to show a novel or unobvious difference between the claimed product and the product of the prior art (i.e. the digestion promoter of the prior art does not possess the same material structural and functional characteristics of the claimed digestion promoter). See In re Best, 562 F.2d 1252, 195 USPQ 430 (CCPA 1977) and In re Fitzgerald et al., 205 USPQ 594.

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5. No claims are allowed.

**Conclusion**

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vanessa L. Ford whose telephone number is (571) 272-0857. The examiner can normally be reached on 9 am- 6 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith can be reached on (571) 272-0864. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Vanessa L. Ford  
Biotechnology Examiner  
July 17, 2006



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PRIMARY EXAMINER